as one of the administrators stepped in. The latter was the sole witness and was unable to give any direct evidence and merely relied on the pleading, certain promissory notes and respondent's limited admissions. It is therefore not surprising that the learned magistrate remarked as follows:—

"I have great sympathy with the administrator who gave his evidence with transparent sincerity but who with the unfortunate death of the plaintiff was deprived of the evidence of the person who could have given clear evidence as to the contract between her and the defendant. But this evidence has not been available and I must remind myself that the defendant could carry through settlements as head of 'hwei' without personal responsibility."

In short the learned magistrate held that the appellant had not established his claim on the balance of probabilities. I can see no fault with the finding of the learned magistrate who had the advantage of seeing and hearing the witnesses.

It seems that "hwei" cases in Sibu are coming to courts in increasing number. I would like to see legislation rendering cases of this nature being made unenforceable in courts. Perhaps I have expressed my sentiment stronger than what was stated by Williams C.J. at page 22 in *Lee Pee Eng* v. *Ho Sin Leow* [4]:—

"I should add, however, that I am not greatly in favour of actions taken in court which arise out of money loan associations. They are much better settled out of court. They depend for their success mainly on the element of trust. Apart from the case of *Soo Hood Beng* v. *Khoo Chye Neo, supra,* I can find no other reference to such cases in Singapore or Federation Reports. I have not heard of any such cases coming before the courts in Sarawak. There have been a few court actions on this matter in North Borneo recently. They were extremely rare in Hong Kong. Obviously Chinese prefer to settle disputes arising from such associations out of court. Here the defendant has been held liable because certain members were in default with their payments. As the agreement is between each member and the head and not between the members themselves, a member cannot usually sue another defaulting member so that the head becomes liable often, through no fault of his own. It is usual, I understand, among some Chinese in cases where a member absconds or defaults to adopt a principle of practical equity and the head is required to make good only one-half of what the defaulting member ought to have paid."

Appeal dismissed.

CHOCK KEK LING v. PATT HUP TRANSPORT CO. LTD. & ORS.

[O.C.J. (Raja Azlan Shah J.) September 25, 1965]

[Malacca — Civil Suit No. 50 of 1963]

Negligence — Duty of care to other road users — Contributory Negligence.

Damages — Ankle — Fracture and lacerated wound.

The plaintiff a passenger in a bus belonging to the first defendant and driven by the second defendant claimed damages for personal injuries sustained by him as a result of an accident between the bus and a lorry owned by the third defendant and driven by the fourth defendant. It appeared that the fourth defendant was driving the lorry and in order to avoid a heap of gravel on the road went to the crown of the road. The second defendant who was driving the bus in the opposite direction saw this but did not apply his brakes but drove on and as a result the accident took place. The plaintiff who was 11 years old at the time of the accident sustained a lacerated wound over the left ankle and a fracture of the ankle bone.

Held: (1) the fourth defendant was clearly negligent in going on to the crown of the road and thereby encroaching on the path of the oncoming bus;

(2) the second defendant was also to blame as he failed to take avoiding action;

(3) both the drivers were therefore to blame for the accident, the fourth defendant to the extent of 75% and the second defendant to the extent of 25%;

(4) in the circumstances the plaintiff was entitled to $2,500 for pain and suffering.

Cases referred to:—

(1) *Noor Mohamed* v. *Palanivelu* [1956] M.L.J. 114.

(2) *Government of Malaysia and another* v. *Kong Ee Kim* [1965] 1 M.L.J. 81 at p. 85.

(3) *London Passenger Transport Board* v. *Upsom* [1949] 1 All E.R. 60 at p. 70.

CIVIL SUIT.

H. B. Ball for the plaintiff.

F. K. Sellar for the 1st and 2nd defendants.

E. Joseph for the 3rd and 4th defendants.

Cur. Adv. Vult.

Raja Azlan Shah J.: On 13th May, 1961, at about 2.40 p.m. the plaintiff was travelling as a passenger in the first defendant's motor-bus M. 6398 driven by the second defendant from Masjid Tanah to Lubok China. He was seated immediately behind the driver's cabin and next to the off-side wall of the bus. At the 27¼ milestone, about 100 yards before entering Lubok China, the said bus met with an accident with an on-coming lorry NA. 3219 owned by the third defendant and driven by the fourth defendant.

As a result of the accident plaintiff sustained personal injuries. He now claims damages against all four defendants. He averred that due to the negligence of the second and fourth defendants or of either of them, the two vehicles came into violent collision. At the time of the accident the plaintiff was 11 years of age and was attending Masjid Tanah Chinese Primary School. He now sues through his next friend, his father.

The first and second defendants admitted that the accident did happen at the time and place in question but denied liability and averred that the accident was caused solely by the negligence of the fourth defendant as the servant or agent of the third defendant. The third and fourth defendants also admitted the accident but

denied liability and cast the blame on the second defendant who they averred caused or contributed to the accident.

The first and second defendants' story is as follows. The second defendant has held a valid driving licence for some 36 years. At the time of accident it was drizzling. The road which was metalled was wet and the surface was slightly slippery. He was on his correct side of the road. When he negotiated a slight right-hand bend he saw the on-coming lorry. When both vehicles tried to cross each other the lorry grazed the off-side of the bus. He said that the lorry came to his side of the road; that was the cause of the accident. If each vehicle was on its correct side of the road he said the accident would not have happened. He said he first saw the lorry some 60 feet away. The speed of the bus was more than 20 m.p.h.. He said the lorry was approaching in a perfectly normal way. He further said that before the accident he noticed on the lorry's near side of the road a heap of gravel and sand measuring one foot in height and spreading on to the roadway for about one foot while the rest was on the grass verge. Evidence was brought to show that the fourth defendant had pleaded guilty to driving without due care and attention in respect of the accident. Although this was not conclusive evidence of the fourth defendant's negligence, it is an admissible admission which supports the plaintiff's case and which weighs against the fourth defendant: see *Noor Mohamed* v. *Palanivelu.*[1] Mr. Joseph has criticised this aspect of the evidence, saying that not only were the facts not put to his client but they were not admitted by him. This, he says, is a serious defect which affects its weight. That is an ingenious way of reasoning, but I think it is too late in the day to attack the record. I take the record as I find it.

The third and fourth defendants' story is as follows. The fourth defendant has been a lorry driver for more than ten years. On the day and time in question he was driving the said lorry from Kuala Lumpur to Masjid Tanah; the lorry was loaded with tiles. When he came to the 27¼ milestone Lubok China he was then doing not more than 30 m.p.h.. On the left hand side of the road, about 400 feet in front of him, he saw a heap of gravel, the same one which the second defendant had mentioned earlier in his evidence. He intended to by-pass the heap of gravel by going towards the crown of the road. At about this time he saw the on-coming bus some 60 feet in front of him doing about 30 m.p.h. and which was on its correct side of the road. He then applied his brakes and at the same time swerved his lorry slightly to the left. When he applied his brakes, the heap of gravel was about 5 to 6 feet away and the on-coming bus was about 30 feet away. As a result, the rear of his lorry skidded and grazed against the bus. After impact the lorry travelled for some 10 feet and finally stopped as shown in the photographs.

I find there was a slight bend in the road. From the photographs, there was extensive damage to the off-side of the bus from the front off-side to the middle of the bus. The off-side front bumper of the lorry was damaged; the off-side body was ripped off. The width of the road in this area was between 16' 8" and 16' 11", and at its widest taking the figure of 16' 11", the said lorry, if it proceeded on its own side of the road, would have a small clearance of merely 1' 3" while the bus in similar circumstances would have a small clearance of 1' 7".

Considering the case as a whole, I find that the accident occurred when the two vehicles, travelling in opposite directions, were crossing each other in broad daylight on a nearly straight stretch of road which was slightly slippery. There was no obstruction to visibility and there was no traffic on the road. I cannot on the evidence bring myself to believe that the lorry skidded. The damage to both the vehicles, the position of the lorry when it finally stopped, the absence of skid marks, lend colour to the probability that no skid ever took place.

I find as a fact that there was this heap of gravel on the road as was told to us by the second defendant as well as the fourth defendant. Mr. Keith Sellar has attacked the report lodged in which the fourth defendant had failed to mention that fact. To this I would say that the report does not and will not contain everything under the sun. It is merely the first step to bring the police machinery into effect. Be that as it may, his client (the second defendant) has admitted in evidence that there was this heap of gravel. So there was. Learned counsel cannot have it both ways.

Knowing that there was this heap of stones which spread on to the road for some one foot, thus, when considering the width of the lorry which was 7' 4", giving his vehicle no more room for clearance, he still pursued the idea of by-passing them by driving his lorry towards the crown of the road and thereby encroaching in the path of the on-coming bus resulting in the collision. In the circumstances, has he taken reasonable care so as not to injure persons and vehicles in his near neighbourhood?

As was said by Thomson L.P. in the case of *Government of Malaysia & Anor.* v. *Kong Ee Kim*: [2]

> ". . . . . every user of a highway owes a duty of care to all other users, and he violates that duty if he does an act without reasonable care which injures another user."

The answer is obvious. I hold that he was clearly negligent in the way he did. However, that is not the end of the matter. Mr. Joseph

urged the court to consider the question of contributory negligence.

The second defendant testified that he hugged to his side of the road all the way. He said this:

"Before impact I did not swerve to the left. I proceeded on my own side of the road. If each vehicle was on its own side of the road the accident would not have happened. I believe the lorry came to my side of the road. That is why it grazed against my bus".

The second defendant knew that part of the road very well. He had first noticed the heap of gravel before the accident. He had noticed the on-coming lorry. Did he foresee or ought to have foreseen what the lorry driver would do next; if so, did he take avoiding action. In this respect the words of Lord Uthwatt in *London Passenger Transport Board* v. *Upsom* [3] are not without relevance:

"A driver is not, of course, bound to anticipate folly in all its forms, but he is not, in my opinion, entitled to put out of consideration the teachings of experience as to the form those follies commonly take".

It was in the same vein that Lord du Parcq said at page 72:

"A prudent man will guard against the possible negligence of others when experience shows such negligence to be common".

The second defendant said that even if one keeps to the left of the road, the clearance is about less than a foot. On the other hand, the fourth defendant said that the bus could have avoided the accident if it applied its brakes. The inference therefore is that the second defendant appears to have thought that he owes no duty of care to other users so long as he kept his vehicle to his own side of the road. In my view the second defendant clearly failed to take any avoiding action and is also to blame.

I have no hesitation to say that both drivers of the vehicles are to blame. I hold that the fourth defendant is 75 per cent. to blame and the second defendant 25 per cent.

Special damages were agreed at $175, not taking into account the item under extra nourishment which Mr. Joseph has attacked as being unreasonable on the ground that hospital nourishment was adequate and that the doctor did not recommend it. I am inclined to agree with learned counsel and I would disallow that part of the claim.

With regard to general damages, the plaintiff at the time of accident was 11 years old. He was hospitalised for one month and thereafter was treated as an out-patient for six months. He sustained a 4" laceration wound over the media aspect of his left ankle, severing the tendons; and a fracture of the ankle bone. There was therefore pain and suffering. He now bears a scar over this injury.

The lady doctor who treated him during the six months he was treated as an outpatient said that there would still be some disability. He would not be able to participate in school games. The doctor said that his wound has now completely healed. To this, the plaintiff said that he still encounters some pain in his ankle. If he walks for long distances the pain will come back. If he presses the injured part he says that there is pain. If he wears shoes he will get the pain. That may be so, but in my view the pain will eventually disappear.

I have considered similar or quite similar authorities on the point which were cited by counsel and I would assess a sum of $2,500 for pain and suffering. In all, there will be $175 special damages and $2,500 general damages. This amount together with the plaintiff's costs will be apportioned between the defendants according to their respective liabilities

Order accordingly.

Solicitors: *Allen, Gledhill & Ball; Sault, Keith Sellar & Co.; Joseph & Son.*

VAN VIERINTEN v. PUBLIC PROSECUTOR

[A.Cr.J. (Ambrose J.) October 5, 1965]

[Singapore — Magistrates Appeal No. 69 of 1965]

Criminal Trial — Plea of guilty — Accused charged with permitting another person to use a motor vehicle whilst motor vehicle was not insured — Whether plea of guilty should have been accepted.

The appellant was charged with permitting another person to use a motor vehicle whilst there was not in force in relation to the user of the motor vehicle such a policy of insurance in respect of third party risks, as complied with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960, an offence under section 3 of the Ordinance. He pleaded guilty and was fined $75 and disqualified from holding a driving licence for twelve months.

Held: the learned magistrate should not have accepted the plea of guilty as the question of law whether there was in force in relation to the user of the motor vehicle such a policy of insurance as complied with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960, was a difficult one for a person unversed in the law to answer and therefore the magistrate could not safely convict solely on an admission of guilt by the appellant.

MAGISTRATE'S APPEAL.

Lal Behari Singh for the appellant.

Dalip Singh (Deputy Public Prosecutor) for the respondent.

Ambrose J.: In this case the appellant was charged with permitting another person to use a motor vehicle whilst there was not in force in relation to the user of the motor vehicle such a policy of insurance in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third Party Risks and Compensation)